

Effective 5/13/2014

16-6a-1202 Sale of property other than in regular course of activities.

- (1)
 - (a) A nonprofit corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property, with or without its good will, other than in the usual and regular course of business on the terms and conditions and for the consideration determined by the board of directors, if:
 - (i) the board of directors proposes the transaction; and
 - (ii) the members entitled to vote on the transaction approve the transaction.
 - (b) A sale, lease, exchange, or other disposition of all, or substantially all, of the property of a nonprofit corporation, with or without its good will, in connection with its dissolution, other than in the usual and regular course of business, and other than pursuant to a court order, shall be subject to this section.
 - (c) A sale, lease, exchange, or other disposition of all, or substantially all, of the property of a nonprofit corporation, with or without its good will, pursuant to a court order is not subject to this section.
- (2)
 - (a) A nonprofit corporation shall comply with Subsection (2)(b) to vote or otherwise consent with respect to the sale, lease, exchange, or other disposition of all, or substantially all, of the property with or without the good will of another entity that the nonprofit corporation controls if:
 - (i) the nonprofit corporation is entitled to vote or otherwise consent; and
 - (ii) the property interests held by the nonprofit corporation in the other entity constitute all, or substantially all, of the property of the nonprofit corporation.
 - (b) A nonprofit corporation may vote or otherwise consent to a transaction described in Subsection (2)(a) only if:
 - (i) the board of the directors of the nonprofit corporation proposes the vote or consent; and
 - (ii) the members, if any are entitled to vote on the vote or consent, approve giving the vote or consent.
- (3) For a transaction described in Subsection (1) or a consent described in Subsection (2) to be approved by the members:
 - (a)
 - (i) the board of directors shall recommend the transaction or the consent to the members; or
 - (ii) the board of directors shall:
 - (A) determine that because of a conflict of interest or other special circumstance it should make no recommendation; and
 - (B) communicate the basis for its determination to the members at a membership meeting with the submission of the transaction or consent; and
 - (b) the members entitled to vote on the transaction or the consent shall approve the transaction or the consent as provided in Subsection (6).
- (4) The board of directors may condition the effectiveness of the transaction or the consent on any basis.
- (5)
 - (a) The nonprofit corporation shall give notice, in accordance with Section 16-6a-704 to each member entitled to vote on the transaction described in Subsection (1) or the consent described in Subsection (2), of the members' meeting at which the transaction or the consent will be voted upon.
 - (b) The notice required by Subsection (1) shall:
 - (i) state that the purpose, or one of the purposes, of the meeting is to consider:

- (A) in the case of action pursuant to Subsection (1), the sale, lease, exchange, or other disposition of all, or substantially all, of the property of the nonprofit corporation; or
 - (B) in the case of action pursuant to Subsection (2), the nonprofit corporation's consent to the sale, lease, exchange, or other disposition of all, or substantially all, of the property of another entity, the property interests of which:
 - (I) are held by the nonprofit corporation; and
 - (II) constitute all, or substantially all, of the property of the nonprofit corporation;
 - (ii) contain or be accompanied by a description of:
 - (A) the transaction, in the case of action pursuant to Subsection (1); or
 - (B) the transaction underlying the consent, in the case of action pursuant to Subsection (2);and
 - (iii) in the case of action pursuant to Subsection (2), identify the entity whose property is the subject of the transaction.
- (6) The transaction described in Subsection (1) or the consent described in Subsection (2) shall be approved by the votes required by Sections 16-6a-714 and 16-6a-715 by every voting group entitled to vote on the transaction or the consent unless a greater vote is required by:
- (a) this chapter;
 - (b) the articles of incorporation;
 - (c) bylaws adopted by the members; or
 - (d) the board of directors acting pursuant to Subsection (4).
- (7) After a transaction described in Subsection (1) or a consent described in Subsection (2) is authorized, the transaction may be abandoned or the consent withheld or revoked, subject to any contractual rights or other limitations on such abandonment, withholding, or revocation, without further action by the members.
- (8) A transaction that constitutes a distribution is governed by Part 13, Distributions, and not by this section.

Amended by Chapter 189, 2014 General Session